

# 214

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

COMMONWEALTH )  
                )  
v.              )  
                )  
EMORY G. SNELL, JR., )  
Defendant      )  
                )

No. 1995CR46579

Superior Court

SUPERIOR COURT  
BARNSTABLE, SS

Filed     DEC 05 2017

*Scott W. Nisbett Clerk*

MOTION FOR DISCOVERY  
MASS.R.CRIM.P. 30(c)4)

Defendant Emory G. Snell, Jr., moves that the Court order post-conviction discovery in this case as follows:

- 1) The personnel file of William Zane, M.D., formerly of the OCME, from the time of his hiring in 1987 to his retirement.
- 2) All documents evidencing or reflecting protocols or restrictions of OCME in existence in 1995, for the conduct of suspected homicide autopsies, whether imposed on Dr. Zane individually or more generally, including, but not limited to, the use of OCME facilities in Boston for the conduct of such autopsies, or the supervision of assistant medical examiners in the conduct of suspected homicide autopsies.

In support of this motion, defendant submits a Memorandum of Law and the documents collected in the Appendix filed herewith.

7/10/18- After hearing,  
continued to 9/19/18 for  
further hearing on discovery.  
OCME records as 'red  
flagged' to be produced  
to the Clerk's Office by  
7/18/18. Transcript of this  
hearing to be produced  
expedited, cost to the court,  
and provided to counsel.

by the court,  
Mass. J. P.  
J. Ant. Clk

Respectfully submitted,  
EMORY G. SNELL, JR.

Richard J. Shea  
Richard J. Shea, Esq.  
398 Columbus Ave. #194  
Boston, MA 02116  
617-909-4321  
BBO 456300

E-MAILED  
7/11/18  
to attys

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

\_\_\_\_\_  
COMMONWEALTH )  
                )  
                )  
v.             )  
                )  
EMORY G. SNELL, JR., )  
Defendant      )  
\_\_\_\_\_

No. 1995CR46579

Superior Court  
BARNSTABLE, SS

File # DEC 05 2017  
*Seth W. Nisbett* Clerk

MEMORANDUM OF LAW  
IN SUPPORT OF  
MOTION FOR DISCOVERY

Introduction. Defendant Emory G. Snell, Jr., has filed a Rule 30(b) Motion for a New Trial, and an accompanying Memorandum of Law. The Memorandum sets forth in detail the salient events in this case since indictment, trial and conviction of First Degree Murder in 1995. A previous new trial motion was filed in 2012 and withdrawn without prejudice in 2015. A previous Motion for Post-Conviction Discovery was filed and denied without prejudice in 2015. The motion judge (Muse, J.) noted at the time that defendant should file a Rule(b) motion, together with a renewed motion for discovery.

(Docket #118).

Pursuant to Mass.R.Crim.P. 30(c)(4), defendant Emory Snell has now filed a motion for post-conviction discovery. The discovery sought focuses on the competence and credibility of Assistant Medical Examiner William Zane, M.D.'s autopsy of Elizabeth Snell.

Defendant seeks evidence from the Commonwealth concerning the

performance and supervision of Dr. Zane during his employment as an assistant medical examiner, as well as restrictions which were imposed by his superiors on his ability to conduct suspected homicide autopsies. The discovery motion specifies the following material:

- 1) The personnel file of William Zane, M.D., formerly of the OCME, from the time of his hiring in 1987 to his retirement.
- 2) All documents evidencing or reflecting protocols or restrictions of OCME in existence in 1995, for the conduct of suspected homicide autopsies, whether imposed on Dr. Zane individually or more generally, including, but not limited to, the use of OCME facilities in Boston for the conduct of such autopsies, or the supervision of assistant medical examiners in the conduct of suspected homicide autopsies.

Argument. Post-trial discovery should be based on a showing of "a prima facie case for relief." Mass.R.Crim.P. 30(c)(4). In requesting such discovery, "the defendant must make a sufficient showing that the discovery is reasonably likely to uncover evidence that might warrant granting a new trial". . . . To meet the prima facie case standard for discovery under a motion for a new trial based on newly discovered evidence, a defendant must make specific, not speculative or conclusory, allegations that the newly discovered evidence would have 'materially aid[ed] the defense against the pending charges'" and that the requested discovery "'could yield evidence that might have "played an important role in the jury's deliberations and conclusions, even though it is not certain that the

evidence would have produced a verdict of not guilty."'"

Commonwealth v. Daniels, 445 Mass. 392, 407 (2005) (citations omitted).

The Memorandum of Law submitted with the pending Rule 30(b) motion sets forth in detail the newly discovered evidence upon which defendant relies for his discovery request. (pp. 33-41) It may be summarized as follows:

1) Information from the late Dr. Stanton Kessler, former Chief of Staff of the OCME, in his statement of March 7, 2011. (Appendix, Exhibit G). Dr. Kessler revealed three major pieces of evidence undermining the credibility and reliability of the autopsy conducted by Dr. Zane in this case: that Dr. Zane was deemed incompetent by his previous employer and was so regarded by Dr. Kessler and his peers; that during the time period of the autopsy in this case, Dr. Zane was forbidden to conduct suspected homicide autopsies without the presence and supervision of a superior; and that Dr. Zane knowingly failed to bring the autopsy to the state of the art OCME facility in Boston, which was reserved for close contact suspected homicide autopsies.

2) The OCME response to defendant's public records request for Dr. Zane's personnel file. (Appendix, Exhibit Q) The response listed various items in the personnel file which were being withheld as statutorily exempt from disclosure. These included memoranda and letters concerning personnel decisions as well as four annual personnel evaluations from 2004, 2005, 2006, and 2008, any or all of

which may evidence Dr. Zane's incompetence and restrictions on his conduct of autopsies.

3) A collection of media reports of autopsies botched by Dr. Zane in the years following the Snell trial, culminating in the 2007 order by the Secretary of Public Safety suspending Dr. Zane from conducting suspected homicide autopsies. (App. I)

4) The opinions of five pathologists consulted since 2005 by defendant's attorneys. The opinions disclose in detail the unscientific findings by Dr. Zane about the cause of death in this case and the multitude of omissions in his autopsy and investigation which violated professional standards of forensic pathology. (App. D-H)

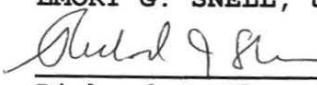
In the 125 days between indictment and the beginning of trial in 1995, defendant Snell and his attorneys were unaware of the foregoing evidence of Dr. Zane's incompetence. The prosecution disclosed no exculpatory evidence reflecting restrictions such as those detailed by Dr. Kessler, or any other negative information about Dr. Zane's competence. The Rule 30(b) motion memorandum has argued in detail the newly discovered and exculpatory nature of the Kessler disclosures and other matters set forth above. It cannot be doubted that defendant has "establish[ed] a prima facie case for relief", Mass.R.Crim.P. 30(c)(4). See Commonwealth v. Daniels, 445 Mass. 392, 407 (2005).

Clearly, the obligation to disclose exculpatory evidence reaches the OCME in this case, as an agent of the prosecution. E.g.,

Commonwealth v. Woodward, 427 Mass. 659, 679 (1998). The motion for discovery should be allowed, subject to whatever protective<sup>1</sup> order the Court deems appropriate.

Conclusion. It is urged that the Motion for Post-Conviction Discovery be allowed.

Respectfully submitted,  
EMORY G. SNELL, JR.

  
By: Richard J. Shea, Esq.  
398 Columbus Ave. #194  
Boston, MA 02116  
617-909-4321  
BBO 456300

---

<sup>1</sup> The privacy exemptions of the public records statute, M.G.L. c. 66, sec. 10(2), do not apply in the context of discovery in a criminal case. "[A]vailability lies in the discretion of the trial judge under standards developed by [the SJC]". Commonwealth v. Wanis, 426 Mass. 639, 642 (1997). "Where affidavits filed by the moving party . . . establish a *prima facie* case for relief, the judge . . . may authorize such discovery as is deemed appropriate, subject to appropriate protective order." Reporter's Notes to Rule 30(c)(4).

## COMMONWEALTH OF MASSACHUSETTS

PSS 215

Barnstable, ss.

\_\_\_\_\_  
 COMMONWEALTH )  
 )  
 )  
 )  
 v. )  
 )  
 EMORY G. SNELL, JR., )  
 Defendant )  
 \_\_\_\_\_ )

No. 1995CR46579

Superior Court  
BARNSTABLE, SS

File #	DEC 05 2017
--------	-------------

*L. W. Nelson* Clerk

AFFIDAVIT OF MICHAEL M. BADEN, M.D.

Michael M. Baden, M.D., deposes and says the following to be true and correct to the best of his knowledge and belief:

- (1) I am Michael M. Baden, M.D., a physician licensed to practice medicine in the State of New York.
- (2) I am Board-Certified as an expert in Anatomic, Clinical and Forensic Pathology;
- (3) I have previously served as the Chief Medical Examiner for the City of New York and as the chief forensic pathologist for the New York State Police;
- (4) I presently maintain an office in New York City for the private practice of forensic pathology;
- (5) I have and do serve as a forensic pathologist expert for the FBI, the Veteran's Administration, the Drug Enforcement Agency, and the U.S. Department of Justice; and have taught aspects of forensic pathology in law schools, medical schools and schools of criminal justice;
- (6) I was Chairman of the Forensic Pathology Panel of the U.S. House of Representatives Select Committee on Assassinations that investigated the assassinations of President John F. Kennedy and Dr. Martin Luther King in the 1970s; I was the forensic pathologist in the Russian government's 1990s re-investigation into the deaths of Czar Nicholas II and the Romanov family; and I was the forensic pathologist requested by the Polish government to investigate the deaths of the President of Poland and 93 prominent officials who died in an airplane crash in Russia in 2010;

(7) I have performed more than 20,000 medico-legal autopsies;

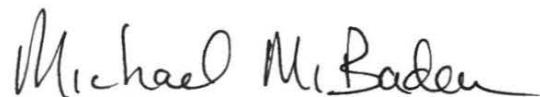
(8) I have been called to testify in murder trials in Massachusetts for the prosecution and for the defense;

(9) At the request of counsel for defendant Emory Snell, I reviewed the evidence concerning the death of Elizabeth Lee Snell.

(10) I previously submitted to counsel for Emory Snell my report, dated April 23, 2015, concerning my findings and opinions on that death.

(11) I adopt herewith, under pains and penalties of perjury, the content of the report referenced above.

Signed under pains and penalties of perjury, 8/17 2017.



By: Michael M. Baden, M.D.  
15 West 53rd Street, Suite 18  
New York, NY 10019

## COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

COMMONWEALTH )  
 )  
 )  
 )  
 v. )  
 )  
 )  
 EMORY G. SNELL, JR., )  
 Defendant )  
 )

Superior Court  
SUPERIOR COURT  
BARNSTABLE, SS

File# DEC 05 2017

Seth Nielsen Clerk

No. 1995CR46579

AFFIDAVIT OF THOMAS W. YOUNG, M.D.

Thomas W. Young, M.D., deposes and says the following to be true and correct to the best of his knowledge and belief:

1. I am Thomas W. Young, M.D., a physician licensed to practice medicine in the State of Missouri.
2. At the request of counsel for defendant Emory Snell, I reviewed the evidence concerning the death of Elizabeth Lee Snell.
3. I previously submitted to counsel an "Analysis of Autopsy Report", dated September 8, 2011, concerning my findings and opinions on that death. The Analysis was filed in the above-captioned case in the Barnstable Superior Court.
4. I adopt herewith, under pains and penalties of perjury, the content of the report referenced above.

Signed under pains and penalties of perjury, June 6 2017

By: Thomas W. Young, M.D.

Subscribed and sworn before me this  
6 day of June, 17.  
 Notary Public Victoria Fickel  
 In and for the County of Jackson, State of Missouri

VICTORIA FICKEL  
 Notary Public - Notary Seal  
 STATE OF MISSOURI  
 Jackson County  
 My Commission Expires Oct. 5, 2019  
 Commission # 15250524

P#217

SUPERIOR COURT  
BARNSTABLE, SS

Filed

DEC 05 2017

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

SUPERIOR COURT

DOCKET NO.: BACR1995-46579

*Seth W. Nisbett* Clerk

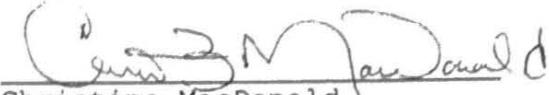
\_\_\_\_\_  
COMMONWEALTH )  
 )  
 )  
v. )  
 )  
 )  
EMORY G. SNELL, JR. )  
 )  
\_\_\_\_\_

**AFFIDAVIT OF CHRISTINE MACDONALD**

I, Christine MacDonald, hereby depose and state:

- 1) I worked as a paralegal in the law office of Pelletier, Clarke & Caley, LLC in 2011.
- 2) During the time of my employ with Pelletier, Clarke & Caley, LLC I worked on this case, and I specifically worked on editing and revising a draft of an affidavit sent to Attorney Gary Pelletier by Dr. Stanton Kessler.
- 3) The document submitted in this case that has been termed "The Kessler Letter" is a true copy of the finalized letter Dr. Kessler sent to me by email. Dr. Kessler approved the letter for filing with his electronic signature.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 1<sup>st</sup>  
DAY OF August, 2015.

  
Christine MacDonald

41 Parco Circle  
Warwick, RI 02886

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

SUPERIOR COURT  
BARNSTABLE, SS

Filed

DEC 05 2017

*Seth W. Niles* Clerk  
Superior Court

COMMONWEALTH )  
Plaintiff, )  
                )  
v.             )  
                )  
EMORY G. SNELL, JR., )  
Defendant. )  
                )

No. 1995CR46579

AFFIDAVIT OF BELINDA L. SOUZA

I, Belinda L. Souza, being duly sworn, deposes and says the following is true and correct to the best of my knowledge:

1. I have known Emory G Snell Jr. for more than 17 years. From 2000 to present, I have actively assisted Mr. Snell. in his collateral attack on his wrongful conviction;
2. I have read Mr. Snell's grand jury, trial and appellate transcripts, and associated case materials and determined that Mr. Snell did not receive a fair trial;
3. Mr. Snell requested that I loan him money for funding experts and defense attorneys on his behalf. I did so, because justice has not been done;
4. Since 2000, the money I have loaned Mr. Snell has been used to engage four independent forensic pathologists and three retained counsel. I worked closely with each of the pathologists and counsel on Mr. Snell's behalf ;

5. In 2005, through my loaned funds to Mr. Snell, Counsellor Irving Marmer was retained. Counsellor Marmer obtained a Post-Conviction Discovery Order from Judge Richard F. Connon on December 16, 2005. That Order allowed complete access to all of Elizabeth Snell's materials in the Office of the Chief Medical Examiner's (OCME) office.
6. These privately retained experts and counsel have uncovered that the State has suppressed both scientific and medical evidence that Dr. William Zane of the Massachusetts Office of the Chief Medical Examiner was not only incompetent, but restricted from performing suspected close contact homicides. This critical information was uncovered when private counsel Gary Pelletier engaged former OCME Chief of Staff, Dr. Stanton Kessler;
7. It is my belief and opinion, that had I not loaned Mr. Snell these monies, this crucial information would have never been uncovered.

I make this affidavit pursuant to my personal knowledge, and it is true and correct on this 27th day of November, 2017 under the pains and penalties of perjury.



Belinda L. Souza  
PO Box 2541  
Woburn, MA 01888-1041

## COMMONWEALTH OF MASSACHUSETTS

P#219

Barnstable, ss.

COMMONWEALTH )  
v. )  
EMORY G. SNELL, JR., )  
Defendant )  
\_\_\_\_\_  
)

No. 1995CR46579

Superior Court  
BARNSTABLE, SS

Filed DEC 05 2017

*Seth W. Nielsen* Clerk

AFFIDAVIT OF RICHARD J. SHEA

Richard J. Shea deposes and says the following to be true and correct to the best of his knowledge and belief:

1. I am Richard J. Shea, a Massachusetts attorney, BBO #456300.

2. I represent Emory Snell in the above-captioned case. As part of my preparation of the Rule 30(b)(2) motion filed in this case, I spoke on the telephone on August 21, 2017, with Attorney Sandra Bloomenthal who was one of defendant Snell's trial attorneys. Ms. Bloomenthal declined to provide me with any affidavit in connection with this case.

3. I spoke on the telephone twice with Albert Bielitz, Jr., who was lead trial counsel for Emory Snell. The conversations were in summer and fall 2017. Mr. Bielitz informed me that he had become concerned before trial in summer 1995 that Dr. Katsas was not providing effective assistance to the defense. After consulting with a relative who was an M.D., Mr. Bielitz requested Judge Travers authorize funds for a second pathologist to assist in developing the defense. He recalled that this occurred in a lobby conference shortly before trial began August 1999. The judge refused. He agreed to submit an affidavit.

4. I submitted a draft affidavit to Mr. Bielitz by mail on October 10, 2017. The affidavit stated what he had told me. Despite my repeated phone messages to his landline in Prudence Island, RI, he did not return the affidavit or reply to me. He had previously told me that he would be in Mexico from November 1, 2017 to May 1, 2018, and would then be generally incommunicado.

Signed under pains and penalties of perjury, this 28<sup>th</sup> day of November 2017.

*Richard J. Shea*



BARNSTABLE, ss.

COMMONWEALTH OF MASSACHUSETTS  
SUPERIOR COURT

DOCKET NO. 1995-CR-46579

COMMONWEALTH

VS.

EMORY G. SNELL, JR.

---

AFFIDAVIT OF JOSEPH F. KROWSKI, ESQUIRE

---

JOSEPH F. KROWSKI, ESQUIRE, being duly sworn, deposes and says the following is true and correct to the best of his knowledge and belief:

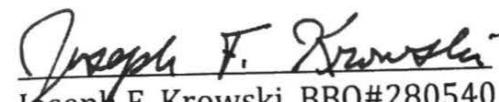
- (1) I am an attorney licensed to practice law in the Commonwealth of Massachusetts. My specialty area of practice is criminal defense with experience in capital case representation;
- (2) I base this affidavit upon my personal knowledge;
- (3) In December 1998 I was CPCS appointed in the criminal matter of Mr. Dale R. Williams;
- (4) Prior to my representation of Mr. Williams, I had spoken with Maryland Chief Medical Examiner, Dr. John Smialek in regards to Massachusetts Office of the Chief Medical Examiner Dr. William Zane;

(5) My conversation with Dr. Smialek resulted in him telling me that Dr. Zane worked for him for one year, but was let go because Zane was unfit to perform forensic pathology;

(6) As an officer of the court, I am bound by the canons of professional ethics and Supreme Judicial Court rules to advance the cause of justice; Whereas my conversation with Dr. Smialek, was indelibly imbedded in my memory, which I believe is **BRADY** exculpatory forensic evidence, I am providing this affidavit as newly discovered material in collaboration for the report authored by Dr. Stanton Kessler; and,

(7) If I am required to testify, then I am prepared to affirm my statements contained herein.

SIGNED THIS 6<sup>th</sup> DAY OF OCTOBER, 2017 UNDER THE PAINS AND PENALTIES OF PERJURY.



Joseph F. Krowski, BBO#280540  
30 Cottage Street  
Brockton, MA 02301